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**AGENDA ITEM SUMMARY**

**Meeting Date:** 9/22/2014  
**Meeting Type:** Work Session  
**Staff Contact/Dept.:** Lauren King, Office of  
City Attorney  
Bob Duey, Finance  
Director  
**Staff Phone No:** 541-746-9621  
**Estimated Time:** 30 Minutes  
**Council Goals:** Financially Responsible  
and Stable Government  
Services

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**SPRINGFIELD  
CITY COUNCIL**

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<b>ITEM TITLE:</b>	MARIJUANA TAX
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<b>ACTION REQUESTED:</b>	Direct staff as to whether the City should consider adopting a tax or fee on marijuana.
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<b>ISSUE STATEMENT:</b>	The purpose of this work session is to discuss whether Council wishes to pass a local tax on medical and recreational marijuana; or whether Council wishes to adopt a fee on recreational marijuana.
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<b>ATTACHMENTS:</b>	Attachment 1: Council Briefing Memo
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<b>DISCUSSION/ FINANCIAL IMPACT:</b>	<p>The 2013 Oregon Legislature passed HB 3460, which created a regulatory and licensing regimen for medical marijuana dispensaries. As of September 4, 2014, there are three approved dispensaries in Springfield. On July 21, 2014, Council passed Ordinance 6324—amending the Springfield Municipal Code to regulate medical marijuana dispensaries and create a business license requirement.</p> <p>Additionally, Oregon voters will vote on Ballot Measure 91 this November. If passed by the voters, Ballot Measure 91 will allow adults 21 or older to recreationally use or grow marijuana (and make products in small amounts for noncommercial purposes). While Ballot Measure 91 is intended to only regulate recreational marijuana, the Measure presents language that may impact local governments' ability to charge taxes or fees on recreational <i>and</i> medical marijuana.</p> <p>There is nothing in current Oregon law that prohibits a local government from taxing or charging fees on marijuana. However, as with any major legislative change, there are many unknowns. As discussed in the attached briefing memo, it is unclear whether Sections 42 (taxation preemption) and 58 (repeal of inconsistent local ordinances) of Ballot Measure 91 would make any tax or fee on marijuana unlawful.</p> <p>Absent adjudication, there is no guarantee that a local tax or fee imposed prior to the passage of Ballot Measure 91 would survive beyond the effective date of the initiative. Alternatively, the Legislature may modify the language to allow taxes passed prior to the Measure be grandfathered <i>or</i> repeal the prohibition on the local taxation of marijuana entirely.</p> <p>Because the state of the law is unknown, cities throughout the state are grappling with the decision as to whether or not to pass a local tax. Currently, Ashland, Medford, King City, Milwaukie, and Tigard have passed a local tax.</p>
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# MEMORANDUM

City of Springfield

**Date:** 9/22/2014

**To:** Gino Grimaldi

**COUNCIL**

**From:** Lauren King, Office of City Attorney  
Bob Duey, Finance Director

**BRIEFING**

**Subject:** Marijuana Tax

**MEMORANDUM**

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**ISSUE:** Whether the City of Springfield should impose a tax or fee on marijuana?

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## **COUNCIL GOALS/**

### **MANDATE:**

Financially Responsible and Stable Government Services

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### **BACKGROUND:**

Oregon voters legalized medical marijuana via initiative petition in 1999. The 2013 Oregon Legislature passed HB 3460, which created a regulatory and licensing regimen for medical marijuana dispensaries. As of September 4, 2014, there are three approved dispensaries in Springfield. On July 21, 2014, Council passed Ordinance 6324—amending the Springfield Municipal Code to regulate medical marijuana dispensaries and create a business license requirement. At that time, Council directed staff to return with amendments to the Springfield Development Code that regulate the siting of the medical marijuana dispensaries. Per Oregon land use law requirements, the Department of Land Conservation and Development has been notified of the land use changes. Staff is scheduled to bring the draft Development Code changes to the Planning Commission in a work session on October 7 and a public hearing on October 21.

Additionally, Oregon voters will vote on Ballot Measure 91 this November. If passed by the voters, Ballot Measure 91 will allow adults 21 or older to recreationally use or grow marijuana (and make products in small amounts for noncommercial purposes).

### **Overview of Ballot Measure 91—Legalized Recreational Marijuana Initiative**

Measure 91 authorizes commercial production, processing and retail subject to licensing by Oregon Liquor Control Commission (OLCC). OLCC will begin accepting license applications on or before January 2016. Measure 91 is not intended to amend or alter the Oregon Medical Marijuana Act; regulation of medical marijuana will remain under Oregon Health Authority's jurisdiction.

OLCC will levy a tax against producers \$35 per ounce for flowers, \$10 per ounce for leaves, and \$5 per immature plant. The tax proceeds will be deposited into "Oregon Marijuana Account." The Marijuana Account will be separate from the State's General fund. Tax proceeds will then be distributed as follows:

- 40% to Common School Fund
  - 20% to State's Mental Health Alcoholism and Drug Services
  - 15% to State Police
  - 10% to cities—to assist local law enforcement in performing its duties under the act. (Prior to 2017 the distributions will be made according to population; after 2017 the distributions will be based on population and number of licenses issued by OLCC)
  - 10% to counties—to be administered in the same manner as cities
  - 5% to OHA for alcohol and drug abuse prevention
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### **Local Medical and Recreational Marijuana Tax**

There is nothing in current Oregon law that prohibits a local government from taxing or charging fees on medical *or* recreational marijuana. However, as with any major legislative change, there are many unknowns. While Ballot Measure 91 is intended to only regulate recreational marijuana, the Measure presents language that may impact local governments' ability to charge taxes or fees on medical *and* recreational marijuana.

In particular, it is unclear as to how the courts might interpret Section 42 of Ballot Measure 91. That section provides that “[n]o county or city of this state shall impose any fee or tax, including occupation taxes, privilege taxes and inspection fees, in connection with the purchase, sale, production, processing, transportation, and delivery *of marijuana items*.” This language can be interpreted to read that no city shall impose any fee or tax *after the date of the measure*. Therefore, it could be argued that this language would not pre-empt any taxation ordinance passed by the Council. On the other hand, the language can be read to indicate that no city shall be allowed to *at any time* impose any fee or tax.

In addition to Section 42 (taxation preemption), Section 58 specifically provides that the Measure shall “fully replace and supersede any and all municipal charter enactments or local ordinances inconsistent with it.” Accordingly, a court could find that a tax or fee is inconsistent with the Ballot Measure and declare that tax or fee invalid.

Absent adjudication, there is no guarantee that a local tax or fee on marijuana imposed prior to the passage of Ballot Measure 91 would survive beyond the effective date of the initiative. Alternatively, the Legislature may modify the language to allow taxes or fees passed prior to the passage of the Measure be grandfathered *or* repeal the prohibition on the local taxation of marijuana entirely.

While nothing prohibits local governments from taxing or charging business license fees on medical marijuana, Ballot Measure 91 may also impact a city's ability to tax medical marijuana. Section 42, potentially, could be interpreted to prohibit local governments from taxing or charging fees on *any marijuana* items, including medical marijuana. Similar to the discussion above, absent adjudication or legislative changes it is unclear should Ballot Measure 91 pass whether taxes or fees on medical marijuana will be upheld.

### **Potential Tax Structures**

There are several potential tax structures. The City of Ashland imposed a gross receipts tax on the sale of medical marijuana, recreational marijuana (should it be legalized by Oregon voters in November) and marijuana-infused products. The ordinance imposes a 5% tax on medical marijuana and a 10% tax on recreational marijuana. Alternately, the City may consider imposing a tax rate based on per ounce sale of flowers, leaves, and immature plants—like Ballot Measure 91's tax structure. Bob Duey is considering the implications and will be available to discuss at Council.

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**RECOMMENDED ACTION:** Obtain guidance from Council as to whether or not the City should adopt a tax on marijuana.

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